

**Policy Affirming the EPA Authority to Access Facilities and Conduct  
Inspections without Providing Personally Identifiable Information**

**Issued by:**

**Office of Compliance and  
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Office of Enforcement and Compliance Assurance  
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## **DISCLAIMER**

The discussion in this document is intended solely as guidance. This document is not a regulation. It does not impose legally binding requirements on the United States Environmental Protection Agency (EPA), States, or the regulated community. This policy does not confer legal rights or impose legal obligations upon any member of the public. The general description provided here may not apply to a particular situation based on the circumstances. EPA retains the discretion to adopt approaches on a case-by-case basis that differ from those described in this policy where appropriate. This guidance is not intended to supersede or duplicate any controlling statutes and/or regulations, but does supersede any prior Agency policies or guidance on this issue.

## Policy Affirming the EPA Authority to Access Facilities and Conduct Inspections without Providing Personally Identifiable Information

### Background

The OECA Office of Compliance issued a Memorandum<sup>1</sup> that addressed a regulated facility's attempt to collect personally identifiable information ("PII") from an EPA inspector prior to allowing the inspector access to a regulated property. The 2008 Memorandum confirmed that facility representatives may not lawfully collect PII from federal employees, and advised EPA inspectors not to release PII as a condition to gaining entry to a facility to conduct inspection activities.<sup>2</sup> The Memorandum identified a driver's license or a home address as examples of PII.<sup>3</sup> The inspectors also were advised to "make clear who he or she represents and the purpose of the visit." Further, if the inspector was denied entry, then he or she was advised to leave the premises immediately and contact his or her supervisor or the Office of Regional Counsel for assistance.

EPA authorized representatives<sup>4</sup> are increasingly being asked to provide PII (including social security numbers or birth certificates) to facilities, or risk being denied access to conduct inspections. This occurs most often at federal facilities, but some private facilities also have denied EPA access unless PII is provided. This document (hereinafter referred to as the "Policy") affirms the EPA policy that EPA authorized representatives shall not provide PII as a condition for access. Further, EPA Order 3510<sup>5</sup> prohibits an EPA authorized representative from relinquishing control of his or her credentials or allowing the credential to be photocopied; this prohibition applies to situations where an EPA authorized representative is asked to relinquish credentials to gain access to conduct an inspection. This Policy also offers steps the EPA authorized representative may take to meet the facility's security needs without providing PII.

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<sup>1</sup> See *Public Servant's Questionnaire and Applicability of the Privacy Act of 1974*, signed by Ken Gigliello, Acting Director, Compliance Assessment and Media Programs Division, June 20, 2008.

<sup>2</sup> The term "inspection" is broadly used to include investigations and sampling, and other terms used to refer to on-site activities designed to gather information to determine compliance. Under the Clean Air Act (CAA) Stationary Source Program, inspections are referred to as "compliance evaluations" and the term "inspection" is meant to include on-site CAA Stationary Source compliance evaluations.

<sup>3</sup> A June 22, 2007, OMB Memorandum M-07-16 from Clay Johnson III, Deputy Director for Management, to the Heads of Executive Departments and Agencies titled [\*Safeguarding Against and Responding to the Breach of Personally Identifiable Information\*](#) states: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity -- such as their name, social security number, biometric records, etc. -- alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc."

<sup>4</sup> For purposes of this Policy, the term "EPA authorized representatives" mean personnel authorized to conduct inspections on behalf of EPA. Examples of EPA authorized representatives include personnel who have been issued a credential to conduct inspections on behalf of EPA and may, for example, include EPA employees, contractors, Senior Environmental Employee (SEE) enrollees, state employees, authorized tribal representatives, and employees of other federal agencies.

<sup>5</sup> EPA Order 3510: [\*EPA Federal Credentials For Inspections and Enforcement of Federal Environmental Statutes and Other Compliance Responsibilities\*](#), revised October 31, 2012.



## **Long-Standing Policy that EPA Authorized Representatives Not Provide PII is Reaffirmed**

EPA authorized representatives conducting inspections on behalf of EPA are instructed that they shall not provide PII or relinquish control of EPA credentials to gain entry to a facility. Environmental statutes provide EPA with broad inspection authorities and do not require EPA authorized representatives to provide PII as a condition precedent to gaining entry. Further, it is important to protect the personal privacy of EPA's authorized representatives. EPA understands that, increasingly, facilities have a need for safety and physical security. Facility representatives may cite to safety protocols, base policies, or standard operating procedures as the basis to collect PII. EPA will use its best efforts to meet a facility's safety or security concerns, but its authorized representatives are not to provide PII. If a facility insists upon collecting PII, then the EPA authorized representative should leave the premises and seek assistance from his or her supervisor (please note, a SEE enrollee should contact his or her SEE monitor) and/or legal counsel. The supervisor will work with the Office of Regional Counsel, the headquarters Program Office, or the Security Management Division, as appropriate.<sup>6</sup>

Certain facilities, such as those with military, intelligence, or nuclear-related functions, may claim they are "classified facilities" and thus have special security or access requirements necessitated by their mission. In these circumstances, EPA will use EPA authorized representatives with the appropriate security clearance levels for access to the "classified" facility and/or information.<sup>7</sup> All information necessary to gain access and information obtained from such inspections will be collected and maintained in accordance with security laws and protocols.

### **Protocols for EPA Authorized Representatives: A Facility Denies Access Unless PII is Provided:**

**Scenario 1. The facility wants you to provide PII to confirm your identity, perform a criminal background check, or comply with the facility's standard operating procedures ("SOPs").**

- ✓ Re-present your EPA inspector credentials as evidence of your identity. In accordance with EPA policy, do not give up physical possession of your credentials.
- ✓ Explain that environmental laws provide EPA the authority to conduct inspections and do not require EPA-authorized representatives to provide PII to gain entry to conduct an inspection. Cite the specific relevant statutory authority.

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<sup>6</sup> For specific information for the EPA authorized representative and his or her supervisor regarding entry procedures and recommendations, and information-gathering tools, please see the Basic Inspector Training (BIT) Course. Please note that the BIT discussion on administrative search warrants applies to private regulated facilities.

<sup>7</sup> Most Regions and the Federal Facilities Enforcement Office (FFEO) have EPA authorized representatives who have the necessary clearances required to access classified information. If needed, contact the Security Management Division at 202-564-6352 for assistance in identifying an EPA authorized representatives with the appropriate clearance level.

- ✓ Explain that, in addition to the authority provided by the law, EPA policy instructs EPA authorized representatives not to provide PII as a pre-condition to gaining access to conduct an inspection.
- ✓ If you have been issued an EPASS badge, show it to them.<sup>8</sup> Explain that the EPA EPASS Badging system is HSPD-12<sup>9</sup> compliant, that it confirms your identity, and that you are a federal government/EPA employee or are an EPA authorized representative. Explain that a criminal background check was performed as part of the EPASS badging process. For information on the EPA EPASS badge and issuing process, see the information on the EPASS badge on the EPA website (<http://www.epa.gov/oarm/epass/index.html>).
- ✓ Provide a number for the facility to call to verify your identity with your supervisor. Additionally, for EPA employees conducting inspections of federal facilities, the EPA Security Management Division is available to confirm an inspector's identity and U.S. citizenship status.<sup>10</sup>
- ✓ If the issue remains unresolved, leave the premises immediately and seek assistance from your supervisor (a SEE enrollee should contact his or her SEE monitor) and/or legal counsel.

**Scenario 2. Facility states that an EPA authorized representative does not have the legal authority to inspect the facility.**

- ✓ Re-present your EPA inspector credentials and explain that the credentials confirm your legal authority to conduct the stated inspection. In accordance with EPA policy, do not give up physical possession of your inspector credentials.
- ✓ Explain that environmental laws provide EPA the authority to conduct inspections. Cite the specific relevant statutory authority.
- ✓ Present the facility with any available information on access authorities.<sup>11</sup>
- ✓ If the issue remains unresolved, leave the premises immediately and seek assistance from your supervisor (a SEE enrollee should contact his or her SEE monitor) and/or legal counsel.

<sup>8</sup> EPA Personnel Access and Security System (EPASS) badge. All permanent EPA employees are required to obtain an EPASS badge. Additionally, all other EPA employees and nonfederal workers are required to obtain an EPASS badge when those personnel need unescorted access to an EPA facility for more than six months. Examples of nonfederal workers may include contractors, SEE enrollees, state employees, and authorized tribal representatives.

<sup>9</sup> Homeland Security Presidential Directive 12: [\*Policy for a Common Identification Standard for Federal Employees and Contractors\*](#) establishes a mandatory, Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors (including contractor employees and SEE enrollees).

<sup>10</sup> Contact EPA's Security Management Division at 202-564-6352.

<sup>11</sup> The FFEO prepared the brochure: *Federal Facilities Inspections: A guide to EPA's access and inspection authorities*, which focuses on access to federal facilities. FFEO and OC are in the process of expanding this brochure so that it applies to all inspections at all facilities. After completion, the updated brochure will be posted on the EPA website and on the Inspector wiki.